IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

WP(C).No. 34630 of 2006(V)

AS.130/2004 of SUB COURT, OTTAPPALAM
OS.183/1999 of MUNI-MAGI.COURT,PATTAMBI

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PETITIONER:

BALAKRISHNAN CHETTIYAR,
S/O. VEERABHADRAN CHETTIYAR, UNTHATHVALAPPIL HOUSE
NAGALASSERY AMSOM, VADAKKE VAVANNUR DESOM,
OTTAPALAM TALUK, KOOTTANAD P.O.,PALAKKAD DISTRICT,
PIN-679 533.

BY ADV. SRI.P.N.RAVINDRAN
SMT.PREETHY KARUNAKARAN
SMT.MEENA.A.
SMT.M.R.MINI
SRI.JAYKAR.K.S.

RESPONDENTS:

SUBRAMANIAN, S/O.VEERABHADRAN CHETTIYAR,
UNTHATHVALAPPIL HOUSE, NAGALASSERY AMSOM,
VADAKKE VAVANNUR DESOM, OTTAPALAM TALUK,
KOOTTANAD P.O., PALAKKAD DISTRICT,PIN-679 533.

BY ADV. SRI.E.R.VENKATESWARAN
SRI.R.SREEHARI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF THE ORDER DATED 28.2.2004 PASSED BY THE COURT OF THE MUNSIFF-MAGISTRATE, PATTAMBI IN I.A.728 OF 2003 IN O.S.183 OF 1999

EXT.P2- TRUE COPY OF THE JUDGMENT DATED 30.6.2004 IN O.S.183/1999 ON THE FILE OF THE COURT OF THE MUNSIFF-MAGISTRATE, PATTAMBI

EXT.P3- TRUE COPY OF THE MEMORANDUM OF APPEAL IN A.S.130/2004 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF OTTAPPALAM

EXT.P4- TRUE COPY OF I.A.2177/2004 IN A.S.130/2004 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE OF OTTAPPALAM.

EXT.P5- TRUE COPY OF I.A.735/2004 IN O.S.183/1999 ON THE FILE OF THE COURT OF THE MUNSIFF MAGISTATE, PATTAMBI.

(TRUE COPY)

P.A TO JUDGE

M.SASIDHARAN NAMBIAR, J.

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W.P.(C)No.34630 OF 2006

.....

DATED THIS THE 18th DAY OF JANUARY, 2007

JUDGMENT

Petitioner is the plaintiff and respondent, defendant in O.S.183 of 1999 on the file of Munsiff Court, Pattambi. The suit was dismissed and counter claim raised by the respondents was decreed exparte. Petitioner filed A.S.130 of 2004 challenging the counter claim along with I.A.2177 of 2004, an application under Section 5 to condone the delay in filing the appeal. Meanwhile respondent filed execution petition and obtained a sale deed executed pursuant to the decree granted in the counter claim. This petition is filed under Article 227 of Constitution of India for a direction to Sub Court to dispose I.A.2177 of 2004 filed, to condone the delay in filing appeal, within a time limit.

2. Learned counsel appearing for petitioner and respondent were heard.

3. It is submitted that respondent has already appeared before Sub Court, Ottapalam. In such circumstances, Sub Judge, Ottapalam is directed to

dispose I.A.2177 of 2004 as expeditiously as possible, and at any rate, within 30 days from the date of receipt of a copy of this judgment. Further execution of decree in the counter claim is stayed till the disposal of I.A.2177 of 2004. If delay is condoned, petitioner is entitled to move under Order XLI Rule 5 (2) of Code of Civil Procedure before the appellate court.

Writ petition disposed accordingly.

M.SASIDHARAN NAMBIAR, JUDGE

lgk

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